

ORIGINAL COPY.

Vol. III

**TRANSCRIPT OF RECORD**

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at 166  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1937

85776  
v. 11c

No. 144

**D. B. HEINER, INDIVIDUALLY AND AS FORMER COL-  
LECTOR OF INTERNAL REVENUE FOR THE TWENTY-  
THIRD DISTRICT OF PENNSYLVANIA, PETITIONER**

vs.

**PAUL MELLON, DAVID K. E. BRUCE, AND DONALD D.  
SHEPARD, EXECUTORS OF THE ESTATE OF A. W.  
MELLON, DECEASED**

No. 145

**D. B. HEINER, INDIVIDUALLY AND AS FORMER COL-  
LECTOR OF INTERNAL REVENUE FOR THE TWENTY-  
THIRD DISTRICT OF PENNSYLVANIA, PETITIONER**

vs.

**JERNIE KING MELLON, RICHARD KING MELLON, SARAH  
MELLON SCAIFE, ET AL., ETC.**

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT**

RECEIVED FOR CERTIFICATION FILED JUNE 15, 1938

CERTIFICATION GRANTED OCTOBER 11, 1937

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*Bill of Exceptions—Defendant's Exhibit "V".*

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**Defendant's Exhibit "V".**

April 6, 1934.

Estate of R. B. MELLON,  
6500 Fifth Avenue,  
Pittsburgh, Pennsylvania.

*In re:* Refund claim for year 1920  
Amount \$187,787.17

Sirs:

Reference is made to Bureau letter dated Feb. 27, 1934 wherein you were informed that the claim for refund indicated above would be disallowed. The letter also stated the reasons for the proposed disallowance.

You are hereby notified that the claim was disallowed on a schedule dated Apr. 6, 1934. This notification is being mailed to you by registered mail and constitutes notice of the disallowance of the claim in accordance with the provisions of Section 3226, Revised Statutes as amended, and as further amended by Section 1103 of the Revenue Act of 1932.

By direction of the Commissioner:

Respectfully,

CHAS. T. RUSSELL,  
*Deputy Commissioner.*

By: (Signed) T. F. LANGLEY,  
*Head of Division.*

---



*Bill of Exceptions—Defendant's Exhibit "W".*

---

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "W", being a certified photostatic copy of letter dated February 27, 1934, addressed to the Estate of R. B. Mellon, from the Commissioner of Internal Revenue, being the letter denying the refund claim for 1920.

*Mr. Booth:*

Object to this, for the same reason that the similar exhibit in regard to A. W. Mellon was objected to. The final rejection letter is Exhibit "V", and this Exhibit "W" is a self-serving declaration and therefore immaterial.

*The Court:*

We will overrule the objection and note an exception.

Which said Exhibit "W" so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "W".**

**Feb. 27, 1934.**

Estate of R. B. Mellon,  
6500 Fifth Avenue,  
Pittsburgh, Pennsylvania.

Sirs:

The claim for refund of \$187,787.17, income taxes for the year 1920 filed by Mr. R. B. Mellon, has been examined.

The Claim is based on the statement that amounts of \$281,779.95 and \$52,814.28 were included in taxable

Bill of Exceptions—Defendant's Exhibit "W".

income representing operating profits of A. Overholt and Company and the West Overton Distilling Company, respectively, and that since the partnerships were in liquidation the profits were not reportable until the year 1925 when final liquidation occurred.

Careful consideration has been accorded the information submitted in the brief dated October 11, 1932 and at a conference held in Washington, D. C., October 12, 1932 and this office holds that Mr. Mellon's proportionate share of the operating profits of the above-mentioned partnerships was properly reportable in his 1920 return.

Accordingly, the claim will be disallowed. In accordance with section 1103 (a) of the Revenue Act of 1932, official notice of the disallowance of the claim will be issued by registered mail.

Respectfully,

CHAS. T. RUSSELL,  
*Deputy Commissioner.*

By (Signed) H. B. ROBINSON,  
*Head of Division.*

*Mr. Booth:*

Plaintiffs admit that the Commissioner's final audit of income tax return of plaintiff A. W. Mellon for the year 1924 showed an overassessment in the said year in the amount of \$16,982.12, and that in determining said overassessment Commissioner did not

*Bill of Exceptions—Defendant's Exhibit "W".*

eliminate from plaintiff's income tax return the amount of \$8,202.09 reported therein as plaintiff's distributive share of the income of A. Overholt & Company, and did not eliminate therefrom an amount of \$7,644.40 deducted on said return as plaintiff's proportionate share of an operative loss sustained by West Overton Distilling Company during the said year; and that said action of the Commissioner is set forth on his certificate of overassessment schedule of July 16, 1931.

The plaintiffs Executors of the Estate of R. B. Mellon admit that the Commissioner's final audit of R. B. Mellon's income tax for the year 1924 showed an overassessment for said year in the amount of \$14,778.35; and that in determining said overassessment the Commissioner did not eliminate from R. B. Mellon's income tax return an amount of \$8,202.08 reported thereon as his distributive share of the income of "A. Overholt & Company, a partnership," and did not eliminate therefrom the amount of \$7,644.40 deducted on his return as his proportionate share of an operating loss sustained by "West Overton Distilling Company, a partnership" during said year; and that the action of the Commissioner is set forth in his certificate of overassessment schedule of July 16, 1931.

Defendant's counsel thereupon offered in evidence, separately, each of the following duly certified photostatic copies of the original income tax returns of the persons named:

1. Individual income tax returns of A. W. Mellon for the calendar year 1925, marked Defendant's Exhibit "X."

*Bill of Exceptions—Defendant's Offers.*

---

2. Individual income tax return of Richard B. Mellon for the calendar year 1925, marked Defendant's Exhibit "Y."
3. Fiduciary return of income filed by The Union Trust Company of Pittsburgh as liquidating agent for A. Overholt & Company, a partnership, for 1925, marked Defendant's Exhibit "Z."
4. Fiduciary return of income, with schedules attached, filed by The Union Trust Company of Pittsburgh liquidating agent for West Overton Distilling Company, a partnership, for 1925, marked Defendant's Exhibit "AA."

To each of said offers plaintiffs' counsel expressly stated that they had no objection thereto.

That the full purport and substance of said Exhibits "X" and "Y" so offered and admitted in evidence is contained in the parts thereof which are in words and figures as follows:

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*Bill of Exceptions—Defendant's Exhibits "X" and  
"Y."*

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**Defendant's Exhibit "X".**

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**Defendant's Exhibit "Y".**

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**SCHEDULE "F" - CAPITAL ASSETS**

Item No.	Kind of Property	Acquired	Disposed
1	Bonds, (Ward Bldg.)	1/1/72	1/1/72
2	Stock, Ward Bldg.	1/1/72	1/1/72
3	Stock, Ward Comm. A	1/1/72	1/1/72
4	Stock, Ward Comm. B	1/1/72	1/1/72
* 5	Stock, Penna. Ward	1/1/72	1/1/72
6	Real Estate, Camden	1/1/72	1/1/72
7	Stock, Fed. Coal.	1/1/72	1/1/72

THE ABOVE WERE JOINTLY BY ANDREW S. NELLON AND EDWARD S. NELLON

ANDREW S. NELLON'S COPY OF LIST

* 8	A. O. O'Connell & Co.	1/1/72	1/1/72
* 9	Real Estate, N.Y.C.	1/1/72	1/1/72
10	Real Estate - Morris	1/1/72	1/1/72
11	Real Estate - Kentucky	1/1/72	1/1/72
12	Real Estate (N.Y.C.)	1/1/72	1/1/72

\* See Enclosure



REMARKS - CARRYING THE BALANCE FROM THE END OF PREVIOUS YEAR INTO THIS YEAR.

Item	Date	Amount	Previously	Balance	Subseq.	Capital
Dr. Bal. of Previous Year						
Forwarded from Sheet No. 1.						1,000,000.00 ✓
13 Stock, American Can. 1/10/21	1/10/21	1,251,007.50 ✓		64,500.00 ✓		623,607.50 ✓
	9/10/21			64,140.00 ✓		
	12/10/21			204,140.00 ✓		
14 Stock, National Bank. 12/10/21	12/10/21	512,287.50 ✓		121,287.50 ✓		90,240.00 ✓
15 Stock, National Bank. 12/10/21	12/10/21	72,100.00 ✓		45,000.00 ✓		29,600.00 ✓
16 C. & O. N. B. 1/10/21	1/10/21	21,000.00 ✓		10,000.00 ✓		4,100.00 ✓
	2/10/21	22,400.00 ✓				
17 Amer. Express Corp. 12/10/21	12/10/21	10,000.00 ✓		10,000.00 ✓		500.00 ✓
18 National Bank 12/10/21	12/10/21	47,500.00 ✓		24,775.00 ✓		22,600.00 ✓
19 New York Shipbuilding. 12/17/21	12/17/21	25,000.00 ✓		15,775.00 ✓		8,000.00 ✓
20 Penn. Water, 3/21. 10/10/21	10/10/21	47,000.00 ✓		34,000.00 ✓	35,000.00 ✓	15,000.00 ✓
21 West End Bank Bridge 10/10	10/10	95,000.00			100,000.00	1,500.00 ✓
22 Fifth Ave. Land Co. 10/10	10/10	1,000.00 ✓		(1,000.00)	(1,000.00)	1,000.00 ✓
	10/10			(1,000.00)		
23 Real Estate 41, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000						
24 Real Estate " " 1000	1000	700.00		1,000.00	1,000.00	700.00 ✓
25 Real Estate " " 1000	1000	5,000.00		500.00	1,975.00	1,975.00 ✓
26 Real Estate " " 1000	1000	5,000.00		1,019.00	1,000.00	5,000.00 ✓
						5,000.00 ✓











**SCHEDULE "D" - CAPITAL NET GAIN FROM SALE OF ASSETS**

1935

Item No.	Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Value Subseq. 3/1/35	Gain
1	Bonds,	9/10/21	9/20/25	19451.50	19000.00	---	451.50
2	Stock,	9/16/12	10/10/25	32913.00	6000.00	6000.00	26913.00
3	Stock,	9/16/12	10/10/25	20878.44	1000.00	1000.00	19878.44
4	Stock,	9/16/12	10/10/25	8256.00	500.00	500.00	7756.00
5	Stock,	* 3/1/25 1/3/26	2/1/25	4473.00	2900.00 500.00	---	1573.00
6	Real Estate,	1925		563511.02	---	337366.40	226144.62
7	Stock,	12/29/22	6/26/25	9402.00	11000.00	---	1598.00
THE ABOVE OWNED JOINTLY BY ANDREW W. MELLON AND RICHARD B. MELLON							
				568814.96	42453.30	140638.77	152323.11
RICHARD B. MELLON'S ONE-HALF OF ABOVE.							
				329407.48	21239.19	74519.37	235649.10
8	A. Overholt & Co. Liquidation	1919	1925	2185374.72	CAP. INV. 1308071.08	---	877263.64
9	West. Overholt Dist. Co. Liquidation	1919	1925	189231.42	CAP. INV. 71192.35	---	118039.07
10	Real Estate (Syracuse, etc.)	1889	1925	60057.83	1615.00	17071.04	61435.00
11	Real Estate	1889	1925	84787.50	2280.00	29888.41	87000.00
12	Real Estate (W.L.M. #2)	1901	1925	4743.67	---	9772.47	11086.82
13	Stock (Liquidation)	1902	1925	2448.62	---	1666.66	781.96
14	Bonds, Ward Bennett Co.	1913	1925	203.70	200.00	200.00	3.70
15	Real Estate (Lots) North 2nd	1921	1925	1938376	754.00	---	1284.36
16	Liquidation (Stock) W.L.M. #2	1920	1925	450.00	---	---	450.00
17	Real Estate (Syracuse, etc.)	1918	1925	20000.00	12613.58	23613.52	7386.42
TOTAL				2878,643.70	3895,001,476,458.74	346959.37	1,070,411.84
NET -				\$ 1,070,411.84			

*Bill of Exceptions—Defendant's Offers.*

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The omitted portions of said Defendant's Exhibits "X" and "Y," together with the parts set forth above, are also incorporated herein by reference and made part hereof, the original said exhibits in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibits be sent up in their original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

That Defendant's said Exhibits "Z" and "AA" so offered and admitted in evidence, as aforesaid, are in words and figures as follows:



*Bill of Exceptions—Defendant's Exhibits "Z" and  
"AA."*

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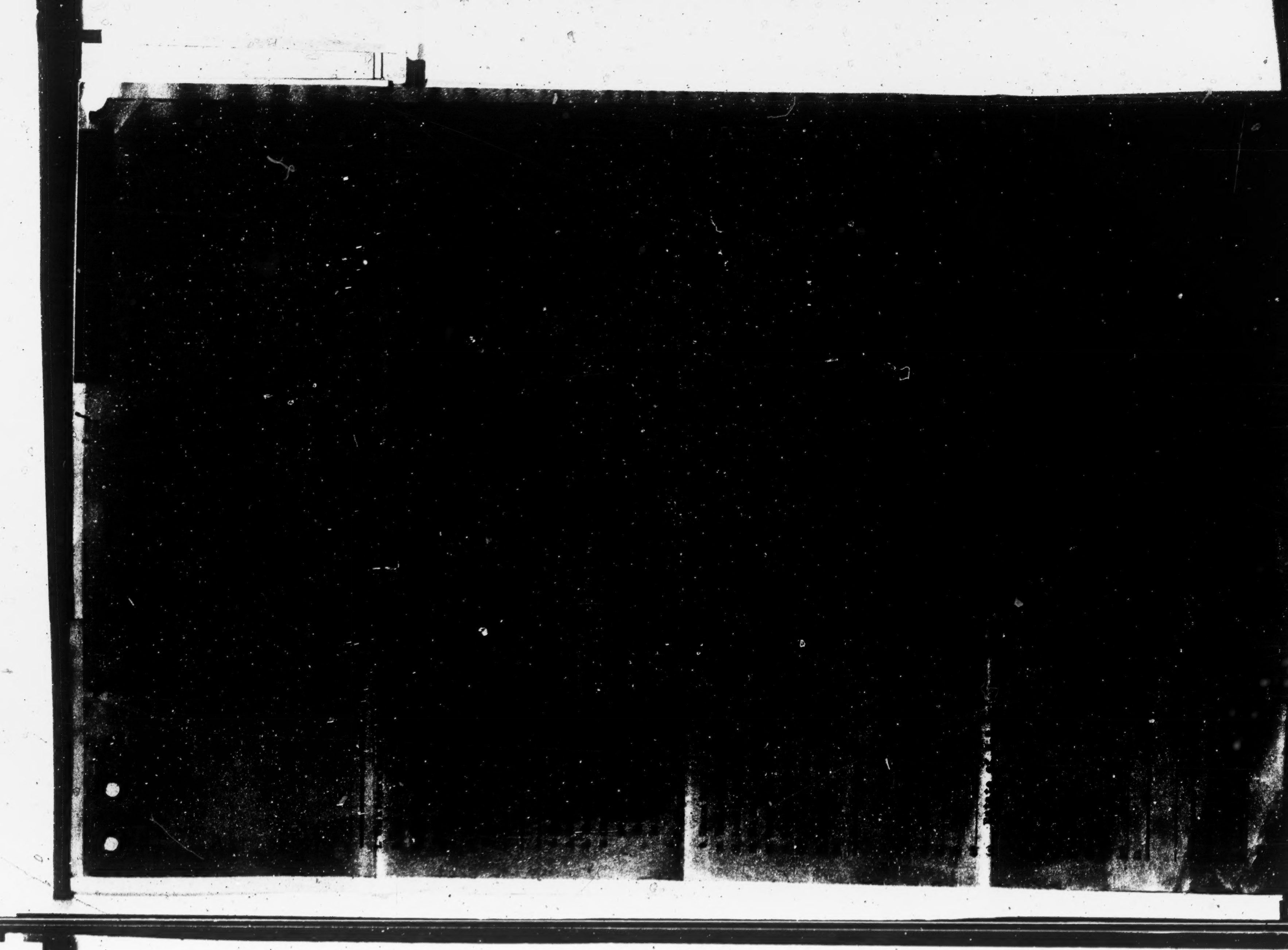
**Defendant's Exhibit "Z".**

(Page 489.)

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**Defendant's Exhibit "AA".**

(Page 490.)





1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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State how property was acquired.

[illegible]

I swear (or affirm) that this return, including the accompanying schedule, is a true and complete return made in good faith for the accounting period as stated.

Sworn to and subscribed before me this 15th day of March 1891  
Ernest M. Dahl Notary Public



1925

SALES:

Cash for goods,  
Bury barrels,  
Storage.

DEBIT:

Office Salaries & Expenses,  
Sundry - Labor, Materials,  
Machinery Expenses, Fuel,  
and Sundry,  
Bread, Post Office Expenses,  
Selling for Trade - Sundry and Freight,  
Sundry.

Notes - Adjustment of Notes shown  
to expenses to 8/15/25.

NOTE: ALL OF THE ASSETS OF A. O. GORDON & SONS,  
AUGUST 1925, 1925, AND THE ABOVE CASH  
THAT DATE AND NECESSARY EXPENSE TO THE



1925

SCHEDULE "D" - CAPITAL NET GAIN FROM SALE OF ASSETS.

THE UNION TRUST CO. OF PGH. LIQUIDATING AGENT  
FOR A. OVERHOLT & CO., A PARTNERSHIP.

CAPITAL ACCOUNT TO DEC. 31, 1925:

Capital account as of Jan. 1st, 1919 (Date of Organization):

A.W. Mellon,  
R.B. Mellon,  
H.C. Frick (Mr. Frick died Dec. 1919),

\$ 1,414,027.51  
1,414,027.51  
1,414,027.51  
\$ 4,242,082.53

PROFITS & LOSSES PER BOOKS TO 1925:

	Profit	Loss
1919	---	654,080.43
1920	145,052.23	---
1921	---	23,876.89
1922	49,644.33	---
1923	---	35,046.39
1924	24,606.25	---
	<u>\$ 219,302.81</u>	<u>713,003.61</u>

ADJUSTMENTS:

1915-17 - Unpaid Assess. Corp. Inc.

Taxes 1916-17.

21,459.95

1919 - Deprec. Disallowed by Int.

Revenue Dept.

198,558.85

1920 - Liquidation Disallowed,

1921 - Liquid. Exp. Disallowed

646,327.63

74,304.90

1919 - 1918 Income Tax Paid by

Partnership,

706,696.35

1925 - Dist. to Employees at Dissolution

- Misc. Reserves Taken up,

10,133.51

Do.

500.00

\$1074,922.00 1615,464.61

NET CAPITAL DECREASE,

\$ 840,642.51

\$ 3,401,440.02

PROFITS FOR YEAR 1925 AS PER RETURN -

207,172.72

TOTAL CAPITAL FOR LIQUIDATION - DEC. 31, 1925

\$ 3,394,267.30

A.W. Mellon,

R.B. Mellon,

Estate of H.C. Frick,

\$1,414,027.51

1,414,027.51

1,414,027.51

\$3,242,082.53



1925

SCHEDULE "D" - CAPITAL NET GAIN FROM SALE OF ASSETS.

THE UNION TRUST CO. OF PCH. LIQUIDATING AGENT  
FOR A. OVERHOLT & CO. A PARTNERSHIP.

ALL OF THE ASSETS, EXCEPTING CERTAIN BILLS RECEIVABLE AND CASH, ON  
AUGUST 18TH, 1925 WERE SOLD TO D.A. SCHULTZ OF NEW YORK, N.Y.

CASH: - PAYMENTS TO PARTNERS A/C LIQUIDATION:

A.W. Mellon	\$ 2,185,374.72	
R.B. Mellon,	2,185,374.72	
Estate of H.C. Frick,	\$2,185,374.71	
Less charges to a/c	<u>400,000.00</u>	
	1,785,374.71	6,156,124.15

CASH RESERVED FOR 1916-17 ASSESSMENT AGAINST  
A. OVERHOLT & CO. A CORPORATION,

21,459.95

CASH RESERVED FOR 1918 INCOME TAX ADJUSTMENT  
A. OVERHOLT & CO. A CORPORATION,

165,000.00

CASH RESERVED FOR ACCTS. PAYABLE & MISC. EXPENSES:

50,811.07

\$ 6,595,395.17  
2,131,131.72

	<u>A.W. MELLON</u>	<u>R.B. MELLON</u>	<u>EST. H.C. FRICK.</u>
LIQUIDATION,	\$ 2,185,374.72	2,185,374.72	1,785,374.71
CAPITAL AS 12/31/25.	<u>1,303,071.06</u>	<u>1,303,071.06</u>	<u>1,303,071.07</u>
CAPITAL NET GAIN.	\$ 882,303.64	882,303.64	482,303.64
		<u>ADD CHARGES TOA/C.</u>	<u>400,000.00</u>
			<u>\$ 882,303.64</u>

BS



Individual Income Tax

1941

1941

1941

1941

1941

1941

1. Was a return of income for 1941 filed on time?

2. If no, to what extent is the return in arrears?

3. Give date of payment of income tax.

4. Report and Royalties. Give income in Schedule M, line 1.

5. Profit from Sale of Real Estate, Stocks, Bonds, etc. Give income in

6. Dividends on Stock of Domestic Corporations.

7. Other Income (including dividends received on stock of foreign corporations).

(a) (b) (c)

8. TOTAL INCOME IN ITEMS 1 TO 7

9. Interest Paid

10. Taxes Paid

11. Losses by Fire, Storm, etc. (Excludes loss on page 2)

12. Bad Debts. (Excludes loss on Schedule M)

13. Contributions. (Excludes loss on Schedule M)

14. Other Deductions Authorized by Law. (Excludes loss on

15. TOTAL DEDUCTIONS IN ITEMS 9 TO 14

16. NET INCOME (Item 8 minus Item 15)

17. DEPRECIATION

1. Name and Address of Trust Corporation

(a) R.B. Mellon,

(b) A.M. Mellon,

(c) Estate of R.B. Mellon,

(d) R.B. Mellon,

(e) R.B. Mellon,

(f) R.B. Mellon,

(g) R.B. Mellon,

(h) R.B. Mellon,

(i) R.B. Mellon,

(j) R.B. Mellon,

(k) R.B. Mellon,

(l) R.B. Mellon,

(m) R.B. Mellon,

(n) R.B. Mellon,

(o) R.B. Mellon,

(p) R.B. Mellon,

(q) R.B. Mellon,

(r) R.B. Mellon,

(s) R.B. Mellon,

(t) R.B. Mellon,

(u) R.B. Mellon,

(v) R.B. Mellon,

(w) R.B. Mellon,

(x) R.B. Mellon,

(y) R.B. Mellon,

(z) R.B. Mellon,

(aa) R.B. Mellon,

(ab) R.B. Mellon,

(ac) R.B. Mellon,



1. A-EXPLANATION OF DEDUCTIONS CLAIMED IN SCHEDULES A AND B

ASSETS SOLD AUG. 1926.

Deductible Expenses	
1. Interest on business indebtedness to others	
2. Taxes on business and business property	
3. Repairs, maintenance, and depreciation (explain in item 17)	
4. Insurance, including fire, theft, and other (explain in item 17)	
5. Other expenses (explain in item 17)	
6. Total (Lines 1 to 5, inclusive)	
7. Total Deductions (Line 6 plus Line 17)	
8. Net Profit (Line 1 minus Line 7) (Enter as Item 1)	

SCHEDULE B-INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. Kind of Property	2. Date Acquired	3. Date	4. Value at March 1, 1925	5. Depreciation (See Instruction 4)	6. Expense	7. Other Expenses (Explain below)	8. Net Profit (Enter as Item 4)
Dwelling			89.36		NONE		89.36

SCHEDULE C-PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. Kind of Property	2. Date Acquired	3. Date	4. Amount Received	5. Depreciation (See Instruction 4)	6. Cost	7. Subsequent Improvements	8. Net Profit (Enter as Item 5)

SCHEDULE D-CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. Kind of Property	2. Date Acquired	3. Date	4. Amount Received	5. Depreciation (See Instruction 4)	6. Cost	7. Subsequent Improvements and Capital Depreciation	8. Net Gain or Loss (Enter in Column 8, Item 17)

SCHEDULE E-EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, AND 14

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Date	4. Original Life After Acquisition	5. Cost	6. Value as of March 1, 1925	7. Previous years	8. This year

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 11

1. Kind of Property	2. Date Acquired	3. Date	4. Amount of Loss	5. Amount of Insurance Received	6. Depreciation (See Instruction 4)	7. Insurance and Salvage Value	8. Deductible Loss

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been explained by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

Sworn to and subscribed before me this 15th day of March, 1926.

Griffin M. Oakley, Notary Public.

(Signature of Notary or other representing Secretary)

(Address of Secretary or other)

(An amended return must be clearly marked "Amended" across face of return)



1925

THE UNION TRUST CO. OF PGH. LIQUIDATING AGENT  
FOR WEST OVERTON DISTILLING COMPANY, A PARTNERSHIP.

SCHEDULE "A" - PROFIT FROM TRADE OR BUSINESS.

SALES ( No sales made ).

EXPENSES 1925:

Insurance,

\$ 1,596.98

Taxes,

3,791.70

Salaries,

5,951.50

Labor - General Expense.

4,596.10

Water, Light Heat & Fuel, etc.

625.76

Supplies charged off at date of sale of  
assets, Aug. 18th, 1925.

12,846.54 29,408.58

LOSS - ( \$ 29,408.58 )

1925

SCHEDULE "D" - CAPITAL NET GAIN FROM SALE OF ASSETS.

THE UNION TRUST CO. OF PGH. LIQUIDATING AGENT  
FOR WEST OVERTON DISTILLING COMPANY, A PARTNERSHIP.

CAPITAL ACCOUNT TO DEC. 31ST, 1925.

Capital as of Jan. 1st, 1919 (Date of organization):

A.W.Mellon,	\$65,231.18
R.B.Mellon,	65,231.18
H.C.Frick, (Mr.Frick died Dec. 1919)	65,231.19
	<u>\$ 195,693.55</u>

PROFITS & LOSSES PER BOOKS:

	Profit	Loss
1919 to 7/31/19	17,455.41	---
1919 to 12/31/19	---	42,252.34
1920	17,881.64	---
1921	---	30,082.74
1922	---	31,966.35
1923	---	29,814.37
1924	---	22,933.21
	<u>35,335.05</u>	<u>157,049.01</u>

1919 - Inv.Deprec.dissalbwed by

Int. Rev. Dept.

1920 - Liquidation disallowed.

1920 - Liquid.Expense " "

	30,169.17	---
	158,426.09	---
	---	19,768.71
	<u>\$ 223,930.31</u>	<u>176,817.72</u>

NET INCREASE - 47,112.59

\$ 242,806.14

( 29,229.07)

NET LOSS YEAR 1925 AS PER RETURN -

NET CAPITAL FOR LIQUIDATION- DEC.31, 1925.

\$ 213,577.07

A.W. Mellon,  
R.B. Mellon,  
H.C.Frick Estate,

\$	71,192.36
	71,192.36
	71,192.36
	<u>\$ 213,577.07</u>



1925

SCHEDULE "D" - CAPITAL NET GAIN FROM SALE OF ASSETS.

THE UNION TRUST CO. OF PGH. LIQUIDATING AGENT  
FOR WEST OVERTON DISTILLING COMPANY, A PARTNERSHIP.

ALL OF THE ASSETS, EXCEPTING CERTAIN BILLS RECEIVABLE AND CASH,  
WERE SOLD AS FOLLOWS:  
AUGUST 18TH, 1925 TO D.A. SCHULTE, N.Y. - ALL CERTIFICATES.  
AUGUST 31ST, 1925 - BUILDINGS, FIXTURES, ETC.

TOTAL CAPITAL FOR LIQUIDATION HELD BY UNION TR. CO. OF PGH.	\$517,694.25
A.W. Mellon,	189,231.42
R.B. Mellon,	189,231.42
Estate H.C. Frick	189,231.41
Less Charges to a/c	50,000.00
	<u>189,231.41</u>
	\$ 517,694.25

	<u>A.W. MELLON</u>	<u>R.B. MELLON</u>	<u>EST. H.C. FRICK.</u>
LIQUIDATION,	\$ 189,231.42	189,231.42	189,231.41
CAPITAL,	<u>71,192.36</u>	<u>71,192.35</u>	<u>71,192.36</u>
	\$ 118,039.06	\$ 118,039.07	\$ 68,039.05
		<u>ADD CHARGES TOA/C</u>	<u>50,000.00</u>
			<u>\$ 118,039.05</u>

195

*Bill of Exceptions—Defendant's Exhibit "BB".*

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Thereupon defendant's counsel offered in evidence, separately, Defendant's Exhibits "BB" and "CC", being duly certified photostatic copies of two letters, each dated March 15, 1929, with statement attached, to A. W. Mellon and Richard B. Mellon, Pittsburgh, from the Commissioner of Internal Revenue, to each of which offers plaintiffs' counsel expressly stated they had no objection.

Which Defendant's said Exhibits "BB" and "CC" so offered and admitted in evidence are in words and figures as follows:

**Defendant's Exhibit "BB".**

March 15, 1929.

Hon. A. W. MELLON,  
Woodland Road,  
Pittsburgh, Pennsylvania.

Sir:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1925 discloses a deficiency of \$48,906.45, as shown in the statement attached.

The section of the law above-mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed Form 866 and

Bill of Exceptions—Defendant's Exhibit "BB".

forward both original and duplicate to the Bureau of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

(Signed) D. H. BLAIR,  
Commissioner.

Enclosures:  
Statement  
Form 866  
Form 882

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STATEMENT, MARCH 15, 1929.

*In re:* Hon. A. W. Mellon,  
Woodland Road,  
Pittsburgh, Pennsylvania.  
TAX LIABILITY.

<i>Year</i>	<i>Corrected Tax Liability</i>	<i>Tax Previously Assessed</i>	<i>Deficiency</i>
1925	\$1,309,448.18	\$1,260,541.73	\$48,906.45



*Bill of Exceptions—Defendant's Exhibit "EB".*

Reference is made to the report of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania, and to your protest submitted to that official under date of June 21, 1928.

Careful consideration has been accorded your protest. The contention that dividends amounting to \$1,000.00 received from the Inspiration Copper Company were nontaxable has been conceded. The contention that of the dividends received from the Kennecott Copper Company, \$7,750.14 were nontaxable, has been conceded in part. Information submitted to this office by the corporation discloses that \$7,685.44 was nontaxable.

Your adjusted return is as follows:

Ordinary income reported ..... \$5,064,727.16

Add:

- |                                    |           |
|------------------------------------|-----------|
| 1. Additional income from rents .. | 73,352.32 |
| 2. Additional dividends .....      | 14,119.70 |

Total ..... \$5,152,199.18

Deduct:

- |                                                                                           |           |
|-------------------------------------------------------------------------------------------|-----------|
| 3. Profit on liquidation<br>of A. Overholt and<br>Company eliminated \$69,257.57          |           |
| 4. Profit on liquidation<br>of West Overton Dis-<br>tilling Company elim-<br>inated ..... | 9,743.03  |
|                                                                                           | 79,000.60 |

Ordinary income adjusted ..... \$5,073,198.58

Capital net gain reported ..... \$2,053,266.80

Bill of Exceptions—Defendant's Exhibit "BB".

## Add:

1. Additional profit on A. Overholt and Company .....	345,648.87
2. Additional profit on West Overton Distilling Company .....	10,686.69
3. $\frac{1}{3}$ profit on sale of 1,800 shares Gulf Oil Corporation stock ....	21,202.17

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Total ..... \$2,430,804.53

## Deduct:

4. Profit on exchange of Pennsylvania Water Company stock ...	495.00
---------------------------------------------------------------	--------

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Capital net gain adjusted ..... \$2,430,309.53

## COMPUTATION OF TAX.

Ordinary income adjusted ..... \$5,073,198.58

## Less:

Dividends .....	\$5,477,663.44	
Personal exemption ..	3,900.00	5,481,563.44

---

Income subject to normal tax ..... None

Surtax on \$5,073,198.58 ..... \$1,006,299.72

Tax at 12 $\frac{1}{2}$ % on \$2,430,309.53 ..... 303,788.69

---

Total tax ..... \$1,310,088.41

## Less:

Earned income credit .....	\$ 12.37	
Tax paid at source .....	627.86	640.23

---

Tax assessable ..... \$1,309,448.18

Tax assessed ..... 1,260,541.73

---

Deficiency ..... \$ 48,906.45

*Bill of Exceptions—Defendant's Exhibit "BB".*

**Explanation of Items Changed in Ordinary Income.**

1. Additional income from rents is due to the elimination of taxes paid for J. M. Guffey Company amounting to \$13,852.32, also to the elimination of attorneys' fees of \$59,500.00 paid in connection with the perfection of titles to certain coal properties which fees are considered capital expenditures.

2. Additional dividends represent dividends of \$64.70 and \$14,055.00 received from the Kennecott Copper Company and the Gulf Oil Corporation, respectively.

3 and 4. Profit reported on the liquidation of A. Overholt Company and the West Overton Distilling Company has been eliminated as it is held that the profit on the liquidation of the above companies is capital net gain.

**Explanation of Items Changed in the Computation of Capital Net Gain.**

1. Profit on the liquidation of A. Overholt Company has been computed as follows:

Amount received in liquidation .....	\$2,185,374.71
Add:	
Your share of gifts to employees ..	33,333.33
Total .....	\$2,218,708.04
Value December 2, 1919 .....	990,755.53
Profit .....	\$1,227,952.51
Profit reported .....	882,303.64
Additional to be reported .....	\$ 345,648.87

*Bill of Exceptions—Defendant's Exhibit "BB".*

2. Profit on West Overton Distilling Company has been computed as follows:

Amount received .....	\$189,231.41
Value December 2, 1919 .....	60,505.66
Profit .....	\$128,725.75
Profit reported .....	118,039.06
Additional to be reported .....	\$ 10,686.69

3. One-third profit on the sale of 1800 shares of Gulf Oil Company stock has been computed as follows:

$\frac{1}{3}$ of selling price .....	\$51,379.67
$\frac{1}{3}$ of cost .....	30,177.50
$\frac{1}{3}$ of profit .....	\$21,202.17

4. Taxable profit on the exchange of stock of the Pennsylvania Water Company is limited to the cash received. As you reported a profit of \$506.50 and received \$11.50 in cash, the profit was overstated by \$495.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. William A. Seifert, Pittsburgh, Pennsylvania, who has on file in this office a duly recorded power of attorney.



*Bill of Exceptions—Defendant's Exhibit "CC".*

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**Defendant's Exhibit "CC".**

March 15, 1929

Mr. Richard B. Mellon,  
6500 Fifth Avenue,  
Pittsburgh, Pennsylvania.

Sir:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1925 discloses a deficiency of \$41,008.84, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS

Bill of Exceptions—Defendant's Exhibit "CC".

FILED, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

D. H. BLAIR,  
Commissioner.

(Signed) C. B. ALLEN,  
Deputy Commissioner.

Inclosures:

Statement  
Form 866  
Form 882

STATEMENT, MARCH 15, 1929.

*In re:* Mr. Richard B. Mellon,  
6500 Fifth Avenue,  
Pittsburgh, Pennsylvania.

TAX LIABILITY.

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1925	\$815,800.12	\$774,791.28	\$41,008.84

Reference is made to the report of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania. The adjustments recommended by the agent have been approved as submitted with the exception of the computation of capital net gain which adjustment is explained below.



Bill of Exceptions—Defendant's Exhibit "CC".

The adjusted return is as follows:

Income reported .....	\$3,249,204.03
Add:	
1. Additional rents .....	13,852.32
2. Additional dividends .....	14,055.00
3. Contributions disallowed .....	1,000.00
4. Loss on liquidation of West Overton Distilling Company eliminated .....	9,743.02
Total .....	\$3,287,854.37
Deduct:	
5. Profit on liquidation of A. Overholt and Company .....	\$69,257.57
6. Error in computation .20	69,257.77
Ordinary income adjusted .....	\$3,218,596.60
Capital net gain reported .....	\$1,070,411.84
Add:	
1. Additional profit on liquidation of A. Overholt and Company ..	345,648.87
2. Additional profit on liquidation of West Overton Distilling Com- pany .....	10,686.69
3. One-third profit on sale of 1800 shares of Gulf Oil Corporation stock .....	21,202.17
Total .....	\$1,447,949.57

Bill of Exceptions—Defendant's Exhibit "CC".

## Deduct:

4. Profit on exchange of Pennsylvania Water Company stock overstated ..... 495.00

Capital net gain adjusted ..... \$1,447,454.57

## COMPUTATION OF TAX.

Ordinary income adjusted ..... \$3,218,596.60

## Less:

Dividends ..... 4,509,368.98

Income subject to normal tax ..... None

Surtax on \$3,218,596.60 ..... \$ 635,379.32

Tax at 12½% on \$1,447,454.57 ..... 180,931.82

Total tax ..... \$ 816,311.14

## Less:

Tax paid at source ..... 511.02

Tax assessable ..... \$ 815,800.12

Tax previously assessed ..... 774,791.28

Deficiency in tax ..... \$ 41,008.84

## Explanation of Items Changed in the Computation of Ordinary Income.

1. Increase in income from rents is due to the elimination of taxes amounting to \$13,852.32 paid for the J. M. Guffey Company which amount is held to be additional cost of investment.

2. Increase in dividends represents dividends paid on stock of the Gulf Oil Corporation which was omitted on your return.



Bill of Exceptions—Defendant's Exhibit "CC".

3. A contribution of \$1,000.00 to the Twenty-eighth Division Publishing Company has been disallowed as this organization does not meet with the requirements of Section 214 of the Revenue Act of 1926.

4. Loss on the liquidation of the West Overton Distilling Company has been eliminated. The profit reportable on this liquidation has been considered as capital net gain.

5. The profit on liquidation of A. Overton and Company has been eliminated as this profit is considered capital net gain.

6. An error of \$0.20 in computation of income has been corrected.

**Explanation of Items Changed in the Computation of Capital Net Gain**

1. Profit on the liquidation of A. Overholt Company has been computed as follows:

Amount received in liquidation .....	\$2,185,374.71
Your share of gifts to employees .....	33,333.33
<b>Total .....</b>	<b>\$2,218,708.04</b>
Value December 2, 1919 .....	990,755.53
<b>Profit .....</b>	<b>\$1,227,952.51</b>
Profit reported .....	882,303.64
<b>Additional to be reported .....</b>	<b>\$ 345,648.87</b>

2. Profit on the liquidation of the West Overton Distilling Company has been computed as follows:

*Bill of Exceptions—Defendant's Exhibit "CC".*


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Amount received .....	\$189,231.41
Value December 2, 1919 .....	60,505.66
<hr/>	
Profit .....	\$128,725.75
Profit reported .....	118,039.06
<hr/>	
Additional to be reported .....	\$ 10,686.69

3. Profit on the sale of 1800 shares of stock of the Gulf Oil Corporation has been computed as follows:

$\frac{1}{3}$ of selling price .....	\$51,379.67
$\frac{1}{3}$ of cost .....	30,177.50
<hr/>	
$\frac{1}{3}$ of profit .....	\$21,202.17

4. Taxable profit on the exchange of stock of the Pennsylvania Water Company is limited to the cash received. As you reported a profit of \$506.50 and received \$11.50 in cash, the profit was overstated by \$495.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. William A. Seifert, Pittsburgh, Pennsylvania, who has on file in this office a duly recorded power of attorney.

---

*Bill of Exceptions—Defendant's Offers.*

---

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "DD," being certified photostatic copy of protest and brief, with exhibits attached, addressed to the Commissioner of Internal Revenue, and submitted by H. M. Johnson, agent of A. W. Mellon, Pittsburgh, Pennsylvania, June 21, 1928.

*Mr. Booth:*

No objection.

Which said exhibit so offered and admitted in evidence is in words and figures as follows (Four exhibits, attached to Defendant's Exhibit "DD," relating to Inspiration Consolidated Copper Co., Kennecott Copper Corporation, Anaconda Copper Mining Company, and Chile Copper Company are not material to the issues herein and are, therefore, omitted):



**Defendant's Exhibit "DD".**  
(Pages 504 a-504 o.)

BEFORE THE TREASURY DEPARTMENT  
COMMISSIONER OF INTERNAL REVENUE

WASHINGTON, D. C.

RECEIVED  
JUN 21 1928  
Internal Revenue A. C. Charge  
PITTSBURGH, A.

## In the Matter

Revenue Agent's Report  
Dated February 15, 1928.

Letter of Transmittal  
Dated March 20th, 1928.

The audit of the income tax returns filed by HONORABLE A. W. MELLON, Woodland Road, Pittsburgh, Pennsylvania, for the calendar years 1924 and 1925.

PROTEST AND BRIEF

HONORABLE D. H. BLAIR,  
Commissioner of Internal Revenue,  
Washington, D. C.

MR. W. P. MAYS,  
Internal Revenue Agent in Charge,  
Pittsburgh, Pennsylvania.

The letter of transmittal grants the taxpayer thirty days' time in which to file a protest. The time in which to file this protest was extended to June 21, 1928.

The above named taxpayer, Hon. A. W. Mellon, protests certain adjustments made by the Revenue Agent as set forth in his report dated February 15, 1928, which may be summarized as follows:

1. The Revenue Agent determined that the taxpayer sustained a capital net loss of \$337,461.54 in the year 1924 on the sale of 500 shares of the capital stock of the J. M. Guffey Company. The taxpayer submits that the deduction to which he is entitled on account of the sale of the said capital stock, which was collateral for a loan was \$376,251.45, and that said amount is not subject to the capital gain or loss provisions of the Revenue Act of 1924.
2. The Revenue Agent determined that the taxpayer had a liquidating net capital profit in the year 1925 of \$1,856,515.99 on the sale of the assets of A. Overholt & Company and West Overton Distilling Company and final distribution in liquidation. The taxpayer submits that the Revenue Agent erroneously included in the said liquidating profit \$489,734.67 which is alleged to be profit on the disposal of the capital stock of A. Overholt & Company, a corporation.
3. The Revenue Agent erroneously increased the taxpayer's income for the year 1925 by the amount of \$1,000.00, alleging same to be taxable dividends received from the Inspiration Consolidated Copper Company.
4. The Revenue Agent erroneously increased the taxpayer's income for the year 1925 by the amount of \$7,750.14, alleging that same constituted taxable dividends received from the Kennecott Copper Company.
5. The taxpayer erroneously included in his return for the year 1925 dividends of \$5,250.00 received from the Anaconda Copper Mining Company.
6. The taxpayer erroneously included in his taxable income for the year 1925 a dividend of \$526.84 which represented dividends from the Chilli Copper Company paid out of Depletion Reserve.



Point I

The Revenue Agent determined that the taxpayer sustained a capital net loss of \$337,461.54 in the year 1924 on the sale of 500 shares of the capital stock of the J. M. Guffey Company. The taxpayer submits that the deduction to which he is entitled on account of the sale of the said capital stock, which was collateral for a loan was \$376,251.45, and that said amount is not subject to the capital gain or loss provisions of the Revenue Act of 1924.

In the Revenue Agent's Report it is stated that the proportionate part of \$58,198.61, being taxes paid by Hon. A. W. Mellon and Mr. R. B. Mellon on the properties owned by J. M. Guffey Company, was not an allowable deduction for the reason that it was the equivalent of an advance or loan to the company. He therefore disallowed one-half of this amount, or \$29,099.30, being the taxpayer's proportionate part. Likewise the said individuals paid taxes on the said properties for the year 1923 in the amount of \$52,052.50. The Commissioner of Internal Revenue deemed that to be in effect a loan to the said company and disallowed as a deduction from gross income of the taxpayer one-half of the said amount or \$26,026.25, being the taxpayer's proportionate part. In 1924 there was also paid for and in behalf of the Guffey Company interest in the amount of \$3,047.43 on loan of Mr. Guffey on the insurance policies which amount should also be added to the Revenue Agent's figures.

The taxpayer agrees with the findings of the Revenue Agent that the taxes paid for the company were not allowable deductions under the heading "Taxes Paid" and that the same were in effect loans made to the J. M. Guffey Company.

The net amount of loans made to the said company by the taxpayer and his brother, Mr. R. B. Mellon, as shown by the Revenue Agent is \$1,174,923.07. To this item should be added the taxes paid for the company and which the Commissioner and the Revenue Agent have determined to be additional loans, the amounts of \$52,052.50 paid in the year 1923, and \$58,198.61 paid in the year 1924, and interest payment of \$3,047.42. This results in net loans made to the J. M. Guffey Company as of 1924 of \$1,288,221.60.

These loans were secured by collateral of 1000 shares of the capital stock of J. M. Guffey Company and life insurance policies on the life of Mr. J. M. Guffey. The cash surrender value of these life insurance policies as of December 31, 1924, against which Mr. Guffey had borrowed money was \$86,509.00.

On or about December 30, 1924, Mr. R. B. Mellon and the taxpayer sold 500 shares of the capital stock of J. M. Guffey Company for which they received \$250,000.00, which amount was applied against the loans made to the said Guffey. This left 500 shares of the capital stock of the said company and the life insurance policies as collateral for the balance of the loan.

The 500 shares of the said capital stock had a cash value on December 30, 1924 of \$250,000.00 based on the selling price of 500 shares sold on that date, which amount together with the value of \$86,509.00, less loan thereon of \$50,790.30, on the life insurance policies results in a total value of \$285,718.70 for the collateral.

-4-  
C



Since the total net loans amounted to \$1,288,221.60 less \$250,000.00, proceeds from sale of part of the collateral, the balance of \$1,038,221.60 was secured by collateral of the value of \$285,718.70.

The taxpayer determined that the loans should be written down from \$1,038,221.60 to the value of the collateral of \$285,718.70 leaving a total amount of \$752,502.90 which represents an ascertainment and determination of the partial worthlessness of the J. M. Guffey notes and the collateral thereon to bring the value of said notes on the books down to the actual value as of December 31, 1924. The write down is to be divided equally between Mr. R. R. Guffey and the taxpayer as the loans to the company were made.

It can therefore be readily seen that this is not one that involves the capital loss provision of the Revenue Act of 1924 and that the write down by account of these loans is a deduction from income for the year 1924 and further.

The following is a statement of the loans made to the taxpayer and the proceeds therefrom which were made to the said J. M. Guffey and on account of the sale of collateral.



Balance of loans

\$1,038,221.60

Value of remaining collateral:

500 shares J.M.Guffey Co. stock \$250,000.00 \*

\*Life insurance policies 35,718.70 285,718.70

Amount determinable and sustained in 1924 \$ 752,502.90

Amount attributable to taxpayer, being  
one-half of the total amount

\$ 376,251.45

\*Cash surrender value of insurance policies  
Dec. 31, 1923

\$ 83,712.00

Add premiums for 1924

\$8,950.00

Less dividends

3,153.00 3,797.00

Approximate cash surrender value of policies

Dec. 31, 1924

\$ 86,509.00

Less loans on policies

50,790.30

Value of policies on Dec. 31, 1924

\$ 35,718.70

It is respectfully submitted that the amount of

\$376,251.45 is the correct amount of the deduction to which  
taxpayer is entitled in the year 1924 and that the same is a  
deduction from ordinary net income and is not subject to the  
capital gain or loss provision of the Revenue Act of 1924.

Point 2.

The Revenue Agent determined that the taxpayer had a liquidating net capital profit in the year 1925 of \$1,858,515.99 on the sale of the assets of A. Overholt & Company and West Overton Distilling Company and final distribution in liquidation. The taxpayer submits that the Revenue Agent erroneously included in the said liquidating profit \$489,724.67 which is alleged to be profit on the disposal of the capital stock of A. Overholt & Company, a corporation.

On page 27 of the Revenue Agent's Report, Schedule No.

4-Q, the liquidating profit has been segregated by the Revenue

Agent as follows:

A. Overholt & Company, Partnership,	\$1,858,095.95
A. Overholt & Company, Corporation,	489,724.67
West Overton Distilling Company,	
Partnership,	<u>128,695.37</u>
Total liquidating profit	\$1,858,515.99

The taxpayer does not dispute the liquidating profit as determined by the Revenue Agent in connection with the distribution in final liquidation of A. Overholt & Company and West Overton Distilling Company, partnerships, but respectfully submits that the alleged liquidating profit of \$489,724.67 on A. Overholt & Company, corporation, is erroneous.

On December 30, 1918, A. Overholt & Company, partnership, and West Overton Distilling Company, partnership, took over all of the assets of the A. Overholt & Company, corporation, and West Overton Distilling Company, corporation, respectively.



The businesses of these partnerships were conducted until December 3, 1919, when Mr. H. C. Frick, one of the partners, died, and from that time on the partnerships were in liquidation and in 1925 final distribution in liquidation was made.

Subsequently The Union Trust Company of Pittsburgh was appointed Liquidating Agent for the said partnerships.

The Revenue Agent has recommended that there be included in the income of the taxpayer for the year 1925 profit alleged to have been realized by him in the disposal of the capital stock of A. Overholt & Company.

As will be noted from the above history of the transaction all of the assets of the corporations were taken over by the partnerships on December 30, 1918. The Revenue Agent does not give any reason or explanation why he has included this alleged profit in the year 1925 and the taxpayer is at a loss to understand on what facts and conclusion of law he arrived at his conclusion.

*Brammings report*

It is respectfully submitted that there could be no profit or loss whatsoever to the taxpayer in the year 1925 in connection with the transfer of the assets of the corporations to the partnerships. This was a transaction that took place in 1918.



Point 3.

The Revenue Agent erroneously increased the taxpayer's income for the year 1925 by the amount of \$1,000.00, alleging same to be taxable dividends received from the Inspiration Consolidated Copper Company.

The taxpayer did not report the dividends received from the Inspiration Consolidated Copper Company for the reason that he received notification from the said company that the dividends of \$1,000.00 were paid out of depletion reserve or capital.

Since these dividends of \$1,000.00 were paid out of capital it follows that the same are not subject to tax.

There is attached hereto and made a part hereof, Exhibit "A", being a photostat of a letter from Mr. J. W. Allen, Treasurer, Inspiration Consolidated Copper Company, dated March 4, 1926, advising that the dividends in question were paid out of Depletion Reserve.

Point 4.

The Revenue Agent erroneously increased the taxpayer's income for the year 1925 by the amount of \$7,750.14, alleging that same constituted taxable dividends received from the Kennecott Copper Company.

In the year 1925, the taxpayer received a dividend of \$3.00 per share on the capital stock owned by him in the Kennecott Copper Company. In his return for that year he reported as taxable dividends received from this company \$1.066 per share and excluded \$1.934 per share or the total amount of \$7,750.14, for the reason that this portion represented dividends paid out of depletion reserve or capital. This is the amount that the Revenue Agent added back to income.

The taxpayer was notified by the Kennecott Copper Company that \$7,750.14 was paid out of depletion reserve.

There is attached hereto and made a part hereof, Exhibit "B", being a photostat of letter from Mr. Stephen Birch, President of the Kennecott Copper Company, dated February 25, 1926, which states that \$1.934 dividends paid to the taxpayer in the year 1925 were paid out of Depletion Reserve.

Point 5.

The taxpayer erroneously included in his return for the year 1925 dividends of \$5,250.00 received by him in that year from the Anaconda Copper Mining Company.

The amount of \$5,250.00 was erroneously reported by the taxpayer as taxable income for the reason that at that time he was unaware that said dividends had been paid out of capital.

It is respectfully submitted that this amount should be excluded from the income of the taxpayer for the year 1925.

There is attached hereto and made a part hereof, Exhibit "C", being a photostat of a letter from Mr. A. H. Melin, Treasurer of the Anaconda Copper Mining Company, stating that the said dividends were paid out of Depletion Reserve.



Point 6.

The taxpayer erroneously included in his taxable income for the year 1925 a dividend of \$528.84 which represented dividends from the Chill Copper Company paid out of Depletion Reserve.

Included in the taxpayer's return for the year 1925 are dividends totaling \$2,625.00 received from the Chill Copper Company. Of this amount \$528.84 is non-taxable for the reason that same was paid out of Depletion Reserve or capital.

It is respectfully submitted that the income for the year 1925 should be reduced by \$528.84.

There is attached hereto and made a part hereof, Exhibit "D", being a photostat of a letter dated February 15, 1927, from Mr. C. W. Welch, Secretary-Treasurer of the Chill Copper Company, advising the taxpayer that of the dividends paid to him in the year 1925, \$528.84 was paid out of Depletion Reserve.

GENERAL

It is respectfully requested that a conference be granted before the office of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania, at which time the taxpayer's representatives will submit such additional data as may be required.

This brief is not filed for the purpose of delay.

Respectfully submitted,

*Wm. Johnson*  
Agent for Hon. A. W. Mellon

STATE OF PENNSYLVANIA,

County of Allegheny.

ss:

Before me, the undersigned authority, personally appeared H. M. JOHNSON, who, being duly sworn according to law, deposes and says that he is Agent for Hon. A. W. Mellon and that the statements set forth in the foregoing Protest and Brief are true and correct as he verily believes.

H. M. Johnson

SWORN to and subscribed before me

this VI<sup>th</sup> day of June, 1928.

M. V. Andrews,  
Notary Public.

My commission expires:

M. V. ANDREWS, Notary Public  
MY COMMISSION EXPIRES  
January 20th, 1929



STATEMENT BY ATTORNEY

The foregoing Protest and Brief has been prepared under my supervision. To the best of my knowledge and belief the statements made therein are true and correct.

W. L. Lufkin  
Atty

*Bill of Exceptions—Defendant's Offer.*

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*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "EE", being a certified photostatic copy of protest and brief to Hon. D. H. Blair, Commissioner of Internal Revenue, submitted by D. J. Hicks, agent for R. B. Mellon, executed June 21, 1928.

*Mr. Booth:*

No objection.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "EE".**

(Page 506 a.)



## WASHINGTON, D. C.

10

Report Dated  
Feb. 23, 1928.  
Letter of Trans-  
mittal Dated  
Mar. 20, 1928.

1. The Revenue Agent determined that the taxpayer sustained a capital net loss of \$337,461.54 in the year 1924 on the sale of 500 shares of the capital stock of the J. M. Guffey Company. The taxpayer submits that the deduction to which he is entitled on account of the sale of the said capital stock, which was collateral for a loan was \$376,251.45, and that said amount is not subject to the capital gain or loss provisions of the Revenue Act of 1924.
2. The Revenue Agent determined that the taxpayer had a liquidating net capital profit in the year 1925 of \$1,856,515.99 on the sale of the assets of A. Overholt & Company and West Overton Distilling Company and final distribution in liquidation. The taxpayer submits that the Revenue Agent erroneously included in the said liquidating profit \$489,724.67 which is alleged to be profit on the disposal of the capital stock of A. Overholt & Company, a corporation.

Point 1.

On page five of the Revenue Agent's Report it is stated that the proportionate part of \$58,198.61, being taxes paid by Hon. A. W. Mellon and Mr. R. B. Mellon on the properties owned by J. M. Guffey Company was not an allowable deduction for the reason that it was the equivalent of an advance or loan to the company. He therefore disallowed one-half of this amount, or \$29,099.30, being the taxpayer's proportionate part. Likewise the said individuals paid taxes on the said properties for the year 1923 in the amount of \$52,052.50. The Commissioner of Internal Revenue deemed that to be in effect a loan to the said company and disallowed as a deduction from gross income of the taxpayer one-half of the said amount or \$26,026.25, being the taxpayer's proportionate part. In 1924



there was also paid for and in behalf of the Guffey Company interest in the amount of \$3,047.42 on loan of Mr. Guffey on the insurance policies, which amount should also be added to the Revenue Agent's figures.

The taxpayer agrees with the findings of the Revenue Agent that the taxes paid for the company were not allowable deductions under the heading "Taxes Paid" and that the same were in effect loans made to the J. M. Guffey Company.

The net amount of loans made to the said company by the taxpayer and his brother, Hon. A. W. Mellon, as shown by the Revenue Agent on page eight of his report is \$1,174,923.07. To this item should be added the taxes paid for the company and which the Commissioner and the Revenue Agent have determined to be additional loans, the amounts of \$52,052.50 paid in the year 1923, and \$58,198.61 paid in the year 1924; and interest payment of \$3,047.42. This results in net loans made to the J. M. Guffey Company as of 1924 of \$1,288,221.60.

These loans were secured by collateral of 1000 shares of the capital stock of J. M. Guffey Company and life insurance policies on the life of Mr. J. M. Guffey. The cash surrender value of these life insurance policies as of December 31, 1924, against which Mr. Guffey had borrowed money, was \$86,509.00.

On or about December 30, 1924, Hon. A. W. Mellon and the taxpayer sold 500 shares of the capital stock of J. M. Guffey Company for which they received \$250,000.00, which amount was applied against the loans made to the said Guffey. This left 500 shares of the capital-stock of the said company and the life insurance policies as collateral for the balance of the loan.



The 500 shares of the said capital stock had a cash value on December 30, 1924 of \$250,000.00 based on the selling price of 500 shares sold on that date, which amount together with the value of \$86,509.00, less loan thereon of \$50,790.30, on the life insurance policies results in a total value of \$285,718.70 for the collateral.

Since the total net loans amounted to \$1,288,221.60 less \$250,000.00, proceeds from sale of part of the collateral, the balance of \$1,038,221.60 was secured by collateral of the value of \$285,718.70.

The taxpayer determined that the loans should be written down from \$1,038,221.60 to the value of the collateral of \$285,718.70 leaving a total amount of \$752,502.90 which represents an ascertainment and determination of the partial worthlessness of the J. M. Guffey notes and the collateral thereon to bring the value of said notes on their books down to the actual value as of December 31, 1924. This write down is to be divided equally between Hon. A. W. Mellon and the taxpayer as the loans to the company were made jointly.

It can therefore be readily seen that this transaction is not one that involves the capital loss provision of the Revenue Act of 1924 and that the write down by the taxpayer on account of these loans is a deduction from income subject to both normal and surtax.

The following is a schedule showing the deduction as determined by the taxpayer for the year 1924 on account of loans which were made to the said J. M. Guffey and on account of the sale of collateral securing said loans in the said year:



Net amount of loans as shown by Revenue Agent on page eight of his report,  
 Taxes paid in 1924  
 Taxes paid in 1923  
 Interest paid on insurance policy in 1924  
 Total loans Dec. 30, 1925  
 Less: Proceeds from sale of 500 shares capital stock of J. M. Guffey Co. held as collateral,  
 Balance of loans

\$1,174,923.07  
 58,198.61  
 52,052.50  
 3,047.42  
\$1,288,221.60  
  
250,000.00  
\$1,038,221.60

Value of remaining collateral:

500 shares J.M. Guffey Co. stock \$250,000.00  
 Life insurance policies 35,718.70

285,718.70

Amount determinable and sustained in 1924 \$ 752,502.90

Amount attributable to taxpayer, being one-half of the total amount, \$ 376,251.45

Cash surrender value of insurance policies Dec. 31, 1923

\$ 82,712.00

Add premiums for 1924  
 Less dividends

\$ 6,950.00  
3,153.00

3,797.00

Approximate cash surrender value of policies Dec. 31, 1924

\$ 86,509.00

Less loans on policies

50,790.30

Value of policies on Dec. 31, 1924

\$ 35,718.70

It is respectfully submitted that the amount of \$376,251.45 is the correct amount of the deduction to which taxpayer is entitled in the year 1924 and that the same is a deduction from ordinary net income and is not subject to the capital gain or loss provision of the Revenue Act of 1924.

Point 2.

The Revenue Agent determined that the taxpayer had a liquidating net capital profit in the year 1925 of \$1,858,515.99 on the sale of the assets of A. Overholt & Company and West Overton Distilling Company and final distribution in liquidation. The taxpayer submits that the Revenue Agent erroneously included in the said liquidating profit \$489,724.67 which is alleged to be profit on the disposal of the capital stock of A. Overholt & Company, a corporation.

On page 27 of the Revenue Agent's Report, Schedule No.

4-Q, the liquidating profit has been segregated by the Revenue

Agent as follows:

A. Overholt & Company, Partnership,	\$ 1,238,095.95
A. Overholt & Company, Corporation,	489,724.67
West Overton Distilling Company, Partnership,	<u>128,695.37</u>

Total liquidating profit

\$ 1,856,515.99

The taxpayer does not dispute the liquidating profit as determined by the Revenue Agent in connection with the distribution in final liquidation of A. Overholt & Company and West Overton Distilling Company, partnerships, but respectfully submits that the alleged liquidating profit of \$489,724.67 on A. Overholt & Company, corporation, is erroneous.

On December 30, 1918, A. Overholt & Company, partnership, and West Overton Distilling Company, partnership, took over all of the assets of the A. Overholt & Company, corporation, and West Overton Distilling Company, corporation, respectively.



The businesses of these partnerships were conducted until December 3, 1919, when Mr. H. C. Frick, one of the partners, died, and from that time on the partnerships were in liquidation and in 1925 final distribution in liquidation was made.

Subsequently The Union Trust Company of Pittsburgh was appointed Liquidating Agent for the said partnerships.

The Revenue Agent has recommended that there be included in the income of the taxpayer for the year 1925 profit alleged to have been realized by him in the disposal of the capital stock of A. Overholt & Company.

As will be noted from the above history of the transaction all of the assets of the corporations were taken over by the partnerships on December 30, 1918. The Revenue Agent does not give any reason or explanation why he has included this alleged profit in the year 1925 and the taxpayer is at a loss to understand on what facts and conclusion of law he arrived at his conclusion.

It is respectfully submitted that there could be no profit or loss whatsoever to the taxpayer in the year 1925 in connection with the transfer of the assets of the corporations to the partnerships. This was a transaction that took place in 1918.

GENERAL

It is respectfully requested that a conference be granted before the office of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania, at which time the taxpayer's representatives will submit such additional data as may be required.

This brief is not filed for the purpose of delay.

Respectfully submitted,

D. V. Hilde  
Agent for Mr. R. B. Mallon




STATE OF PENNSYLVANIA,        )  
                                      )  
County of Allegheny.        ) ss:

Before me, the undersigned authority, personally appeared D. J. HICKS, who, being duly sworn according to law, deposes and says that he is Agent for Mr. R. B. Mellon and that the statements set forth in the foregoing Protest and Brief are true and correct as he verily believes.



SWORN to and subscribed before me  
this 21st day of June, 1928.

  
Notary Public.

My commission expires:  
M. V. ANDREWS, Notary Public  
MY COMMISSION EXPIRES  
January 20th, 1929



STATEMENT BY ATTORNEY

The foregoing Protest and Brief has been prepared under my supervision. To the best of my knowledge and belief the statements made therein are true and correct.

M. A. Lufkin  
att'y.

*Bill of Exceptions—Defendant's Offer.*

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*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "FF", being a certified photostatic copy of claim for refund for \$58,335.34 income tax for 1925, with additional sheets attached, filed by Andrew W. Mellon, Pittsburgh, Pennsylvania.

*Mr. Booth:*

No objection.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "FF".**

(Page 508 a.)



# CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☒ REFUND OF TAX ILLEGALLY COLLECTED.

☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.

☐ ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

State of Pennsylvania

County of Allegheny

Name of taxpayer or purchaser of stamps

ANDREW W. MELLON

Business address

Pittsburgh, Pennsylvania.

Residence

1925 Pennsylvania 1925 to Dec. 31, 1925

1. District in which return (if any) was filed 23rd Pennsylvania

2. Period (if for income tax, make separate form for each taxable year) from JAN. 1, 1925 to Dec. 31, 1925

3. Character of assessment or tax INCOME TAX

4. Amount of assessment, \$ 58,335.34; dates of payment June 13, 1929

5. Date stamps were purchased from the Government

6. Amount to be refunded (or such greater amount as is refundable) 58,335.34

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires, under Section 5 of the Revenue Act of 19 24, on JUNE 13, 1929

The deponent verily believes that this claim should be allowed for the following reasons:

Sworn to and subscribed before me this

-14th- day of May, 1932

Signed

W. A. Phillips Agent for Andrew W. Mellon.

M. V. Andrews Notary Public.

M. V. Andrews (Notary of other administering oath)

(Title)

(SEE INSTRUCTIONS ON REVERSE SIDE)

# CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Character of assessment and period covered	Lot	Year	Month	ACCOUNT NO. ON		Amount assessed	PAID, ABATED, OR CREDITED		Pd. Ab. Cr.
				Page	Line		Date	Amount	
1925	46	1926	3	100		8,126.64	72	2-15-26	8,172.22
								6-15-26	2,120.50
								9-15-26	3,151.25
								12-15-26	3,151.25
1925	47	1926	3	101		4,896.45			
								6-13-29	5,123.54
Total, \$ 13,181.79									
Total, \$ 13,181.79									

I certify that the records of this office show the following facts as to the purchase of stamps:

To Whom sold on return	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamps, state:	
						Serial number	Period commencing

J. W. Heinrich 726  
Collector of Internal Revenue. (Debit)

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed... \$

Amount allowed... \$

Amount rejected... \$

COMMITTEE ON CLAIMS

## INSTRUCTIONS

- The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.
- The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign a claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.
- If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copy of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.
- Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.



The partnerships of A. Overholt & Company and West Overton Distilling Company were completely liquidated and final distribution made of their assets to Messrs. A. W. and R. B. Mellon and the Frick Estate in 1925.

Messrs. A. W. and R. B. Mellon reported in their respective tax returns for each of the years 1920 to 1925, both inclusive, their proportionate part of the yearly operating net income or operating loss of the liquidating agent of said partnerships.

The Commissioner of Internal Revenue in the audit of the tax returns for the year 1925, determined that Messrs. A. W. and R. B. Mellon and the H. C. Frick Estate were taxable on their proportionate part of the entire net profit resulting from the liquidation of these partnerships determined by using the value as shown on the partnership books as of December 31, 1919, and the total net liquidating distributions made to the partners, less expenses. He included in said liquidating profit for 1925 the operating profits and operating losses for the years 1920 to 1925, both inclusive, which the taxpayers had included in their returns for each of said years. Under date of March 15, 1929, the taxpayer was advised by the Commissioner that there would be assessed an additional tax of \$48,906.45 for the year 1925 and in June 1929, the Collector of Internal Revenue sent the taxpayer a notice and demand for the payment of said amount together with interest of \$9,428.89, making a total of \$58,335.34, which amount was duly paid pursuant to said notice and demand by the Collector.

Since the Commissioner's final determination that the liquidating profits in 1925 should include the operating profits of the liquidating agent for the years during which the partnerships were in process of liquidation, it followed that upon such determination the taxpayer erroneously included in his return the operating profits or losses for each of said years. Therefore, the taxpayer filed a claim for refund for the year 1920, requesting that refund be made of so much of the tax as resulted from the inclusion in his net income of the operating profit of A. Overholt & Company and West Overton Distilling Company.

The taxpayer, since refund claim was filed, received a letter from the Commissioner in which he advises that the taxpayer correctly reported the current profits of the liquidating agent during the period of liquidation and that he, the Commissioner, had erroneously included in taxable income in the year 1925, the operating profits and losses of said liquidating agent during the period of liquidation. Without admitting that the Commissioner was wrong in including said operating profits of the liquidating agent during the period of liquidation in 1925, the taxpayer, as a matter of protection against the running of the statute of limitations for said year 1925, files this claim for refund with the request that if it be finally determined



that the Commissioner was wrong in including said liquidating profits during period of liquidation in the year 1925, that said amounts be excluded therefrom and refund made of the amount erroneously included in the Commissioner's final letter pursuant to which notice and demand was issued by the Collector and payment duly made pursuant to said demand.

The taxpayer has been informed that in the case of the H. C. Frick Estate the liquidating profits during the period liquidation were included in the liquidating profits in the year 1925, by the Commissioner, that the tax was paid as so found by the Commissioner and that said case has been finally closed on that basis.

Full

*Bill of Exceptions—Defendant's Offers.*

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*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "GG", being certified photostatic copy of claim for refund for \$48,915.12 income tax for 1925, with statement attached, filed by Mr. Richard B. Mellon, Pittsburgh, Pennsylvania.

*Mr. Booth:*

No objection.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

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*Bill of Exceptions—Defendant's Exhibit "GG".*

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**Defendant's Exhibit "GG".**

(Page 510 a.)



*Bill of Exceptions—Defendant's Offers.*

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*Mr. Booth:*

Plaintiffs admit that the books and records of the liquidating trustees of the former partnerships were kept on the accrual basis of accounting.

*Mr. Eustace:*

We object to the term "liquidating trustees".

*Mr. Booth:*

It is merely descriptive, as I used it.

*The Court:*

Well, of the particular persons named.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "HH", being a certified photostatic copy of revenue agent's report dated September 8, 1925, *in re* the income tax of Andrew W. Mellon for the year 1921.

Defendant's counsel stated said offer was made for the purpose of showing that in the year 1921 A. Overholt & Company sustained a loss, and each partner's distributive share of the loss for 1921 was \$32,503.93, used in determining or making a computation of the net profit of the liquidation of A. Overholt & Company in 1925.

*Mr. Booth:*

If the Court please, we object to the introduction of any evidence tending to recompute the profit for 1925. The pleadings admit that the Commissioner in 1925 included the 1920 income in his computation of the profit, and it now stands upon the record with that admission. This will be an attempt to try the 1925

case in this case, which is not involved; the only question at issue involved in this case is whether or not the 1920 income was also included in 1925, and on which the tax has been paid, that stands admitted. Now they switch their position again, and will attempt with this manner of proof to try the 1925 case and prove now that the 1925 tax was not overpaid, which is not in issue. When the 1925 refund claim is finally acted upon, that is when this matter is to be discussed. They have not averred that the 1925 income as computed by the Commissioner was not correctly computed, and they are attempting now to introduce evidence and then argue on that evidence that the Commissioner incorrectly computed the tax for the year 1925. It is entirely irrelevant, immaterial and incompetent. They cannot switch their position now contrary to the allegations in the pleadings.

*The Court:*

This, as I understand you, is the 1921 return?

*Mr. Eustace:*

It is the '21 return, which is referred to and alleged in the statement of claim has been treated by the Commissioner in a certain way each year between 1920 and 1925, and this is for the purpose of meeting that issue, if the Court determines it is material. We made the objection it was immaterial, and the Court admitted it over our objection, and if the Court does determine it is material, we want this proof to show that the taxpayer has not been subjected to double taxation, which they allege in their statement of claim.